

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GILBERT F. PETERS,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No. 07-13505

Hon. Gerald E. Rosen

Magistrate Judge Steven D. Pepe

**ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on September 30, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

On January 15, 2008, Magistrate Judge Steven D. Pepe issued a Report and Recommendation ("R & R") recommending that the Court grant the Defendant Commissioner of Social Security's motion to dismiss. On February 13, 2008, Plaintiff Gilbert F. Peters filed objections to the R & R.¹ For the reasons stated briefly below, the Court finds no merit in these objections, and therefore adopts the R & R in its entirety.

In his objections, as in his response to Defendant's underlying motion to dismiss, Plaintiff continues to assert that the 60-day period of limitation set forth at 42 U.S.C. §

¹The Court notes that these objections were filed just over a week outside the 10-day period for doing so.

405(g) does not apply here, and that he timely commenced this action within a longer period of limitation that governs suits brought under the Administrative Procedure Act. As explained in the R & R, however, Plaintiff's right of action in this case plainly arises under the Social Security Act (the "Act"), where it is clear from his complaint that he seeks to challenge the decision of the Defendant Commissioner that he was not entitled to Supplemental Security Income benefits. Because the Act gives rise to Plaintiff's claim, it provides the exclusive avenue for judicial review of Defendant's decision, *see* 42 U.S.C. § 405(h), and Plaintiff was obligated to commence this suit within the Act's 60-day period of limitation. He acknowledges that he did not and, as observed in the R & R, he has not suggested any basis for tolling this period of limitation. Accordingly,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's January 15, 2008 report and recommendation is ADOPTED as the ruling of this Court. IT IS FURTHER ORDERED, for the reasons stated in the R & R, that Defendant's motion to dismiss is GRANTED.

Dated: September 30, 2008

s/Gerald E. Rosen
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager